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5 Attorney for Secured Creditor  
SAN FRANCISCO FEDERAL CREDIT UNION

8 UNITED STATES BANKRUPTCY COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 SAN FRANCISCO DIVISION

11 IN RE: ) CASE NO. 12-32811  
12 DAVID ROGER GAUDRY )  
13 Debtor, \_\_\_\_\_ ) Chapter 13  
14 )  
15 ) OBJECTION TO CONFIRMATION OF  
16 ) CHAPTER 13 PLAN BY SECURED  
17 ) CREDITOR SAN FRANCISCO  
18 ) FEDERAL CREDIT UNION

19 Continued Meeting of Creditors: 12/27/2012  
Time: 1:00 p.m.

Place: Office of U.S. Trustee  
235 Pine Street, Suite 850, San Francisco, CA

20 Confirmation Hearing Date: TBA

21 Secured Creditor, SAN FRANCISCO FEDERAL CREDIT UNION (“Secured  
22 Creditor”), objects to confirmation of the Debtor’s proposed Chapter 13 Plan on the following  
23 grounds:

24 1. Secured Creditor provided the Debtor with purchase money financing on the  
following described motor vehicle and has duly perfected its security interest in the vehicles  
by registering with the Department of Motor Vehicles as lienholder:

- 25 a. 2002 Honda S-2000;  
26 b. 2005 Toyota Sienna.

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1           2. The Debtor has correctly scheduled Secured Creditor as the holder of the purchase  
2 money security interest in both vehicles on Schedule D.

3           3. Secured Creditor has filed separate Proofs of Claim relating to each secured vehicle  
4 noted in the Claims Register as Claims Numbers 6 and 7 (note: Secured Creditor filed an  
5 Amended Proof of Claim Number 7). As reflected on Secured Creditor's Proofs of Claim, the  
6 interest rate on each secured motor vehicle loan is 5.99%.

7           4. The Debtor's proposed Plan at Section 4(A) proposes the nominal interest rate on  
8 each secured claim in the amount of 3.00%.

9           5. Secured Creditor objects to confirmation of the Chapter 13 Plan on the grounds that  
10 the propose interest rate of 3.00% per annum on the secured claims is not adequate for purposes  
11 of the provisions of 11 U.S.C. §1325(a)(5)(B)(iii)(II). The U.S. Supreme Court in the matter  
12 of Till v. SCS Credit Corporation 124 S.Ct. 1951 (2004), held that the appropriate interest rate  
13 is determined by the "formula approach". The formula approach requires the Bankruptcy Court  
14 to use the National Prime Rate as the starting point for interest on a consumer secured claim  
15 and then adjust the Prime Rate to account for the Debtors' greater risk of non-payment then a  
16 solvent commercial borrower. In addition to the default risk imposed by the Debtors, the Court  
17 may consider evidence about the "liquidity of the collateral market." It is respectfully  
18 submitted that in the case where a consumer motor vehicle is pledged as collateral, the Court  
19 may take judicial notice of the fact that the vehicle depreciates on a monthly basis from the  
20 mere passage of time in addition to use, wear and tear.

21           6. The National Prime Rate in effect when the Debtor filed his Chapter 13 Petition  
22 in this matter was 3.25% per annum as reported by the Federal Reserve Bank internet site  
23 ([www.federalreserve.gov](http://www.federalreserve.gov)). Utilizing the formula approach of the Till case, Secured Creditor  
24 respectfully suggests that 6.25% per annum is a reasonable rate of interest when the Court  
25 takes into consideration the character of the rapidly depreciating vehicle collateral and the risk  
26 of default coupled by the period of time that the Debtor propose to pay on the secured claims.

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28           ///

1           Wherefore, Secured Creditor respectfully requests that the Court deny confirmation of  
2 the Chapter 13 Plan; or in the alternative, condition confirmation on an interest rate of 6.25%  
3 per annum on both of Secured Creditor's Proofs of Secured Claims.

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5 Dated: December 20, 2012

Respectfully submitted,

6           /s/ Gary L. Fertig #059360  
7 GARY L. FERTIG, Attorney for  
Secured Creditor San Francisco Federal  
Credit Union

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